

REMARKS

Claims 1-26 are pending.

The communication mailed January 26, 2007 states that the reply filed on November 2, 2006 is not fully responsive to the prior Office Action because it does not specifically address the rejection of claims 4-5, 16-17 and 23-24 under the second paragraph of 35 USC 112. In the reply filed on November 2, 2006, the applicant argued as follows:

Applicants respectfully disagree that use of relative timing terms such as “frequent” and “frequently” is inherently indefinite. Such terms have been used in claims whose scope has been successfully assessed by courts – including the Supreme Court. For example, the Court of Customs and Patents Appeals was able to assess a method claim that included steps performed at “frequent intervals” without difficulty, reversing the Board of Appeals’ rejection, and the Supreme Court was able to affirm that ruling on appeal. *In re Diehr*, 602 F.2d 982, 203 U.S.P.Q. 44 (CCPA 1979), *aff’d Diamond v. Diehr*, 450 U.S. 175 (1981). See also *In re Deutsch*, 553 F.2d 689, 690, 193 U.S.P.Q. 634 (CCPA 1977) (reversing boards’ rejection of a method claim that used both “periodically” and “frequent intervals” to describe the timing of the steps). The courts’ ability to determine the bounds of claims that utilize relative timing terms indicates that such terms are not inherently indefinite. There is no reason that such terms are any less definite in this case than they were in *Diehr* or *Deutsch*. Applicants respectfully request withdrawal of examiners’ rejection under 35 U.S.C. § 112.

This argument was directed to the August 2, 2006 Office Action’s rejection of claims 11 and 12, which include the phrases “frequent” and “frequently concurrent,” respectively, and claims 4-5, 16-17, and 23-24, which use the phrases “rare” and “rarely concurrent,” respectively. “Rare” and “rarely concurrent,” like “frequent” and “frequently concurrent,” are relative timing terms of the sort that have been included in claims that the courts have been able to interpret in the past. There is no reason why “rare” and “rarely concurrent” are any less definite in this case

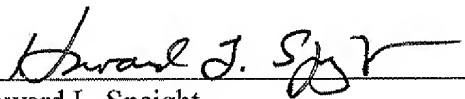
than the similar terms in *Diehr* and *Deutsch* (cited above). Note also that many issued patents include the terms “rare” and “rarely” in their claims. See, e.g., U.S. Patent No. 5,667,319 (“rarely used characters”); U.S. Patent No. 5,186,555 (claim 4 includes “rarely” and claim 5 includes “frequently”).

Applicant respectfully requests that this rejection in the August 2, 2006 Office Action be withdrawn.

SUMMARY

Applicant contends that the claims are in condition for allowance, which action is requested. Applicant does not believe any fees are necessary with the submitting of this response. Should any fees be required, Applicant requests that the fees be debited from deposit account number 14-0225, Order Number 11384.

Respectfully submitted,



Howard L. Speight
Reg. No. 37,733
9601 Katy Freeway
Suite 280
Houston, Texas 77024
(713) 881-9600 (phone)
(713) 715-7384 (facsimile)
howard@hspeight.com
ATTORNEY FOR APPLICANTS

Date: February 20, 2007